IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 90 of 2005

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARISINGH PREMSINGH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 90 of 2005

MR CB DASTOOR for Petitioner No. 1

Mr.K.P.Raval, A.P.P. for Respondent No. 1

MR BS BRAHMBHATT for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 08/04/2005

ORAL JUDGEMENT

1. This Criminal Revision Application filed under

Section 397 read with Section 401 of the Criminal Procedure Code, 1973 is directed against the judgment and order dated 20-12-2004 passed by the learned Additional Sessions Judge, Court no.6, Ahmedabad rejecting the Criminal Appeal no.33 of 2004 of the petitioner accused and confirming the order of conviction and sentence dated 17-2-2004 passed by the learned Metropolitan Magistrate, Court no.3, Ahmedabad in Criminal Case no.179 of 2001 awarding simple imprisonment for a period of 6 months and fine of Rs.5000/-, in default of payment of fine, further simple imprisonment of one month.

2. The facts leading to the present Revision are that the applicant-accused had borrowed Rs.1,20,000/from the respondent no.2-Ashwsinbhai Ganpatbhai Patel against which a cheque dated 26-12-2000 was issued, However, on presentation to the concerned back the same was returned with the endorsement " insufficient funds". Thereupon a complaint came to be lodged by the respondent no.2 under Section 138 of the Negotiable Instruments Act before the learned Metropolitan Magistrate, and the learned Metropolitan Magistrate, Court no.3, Ahmedabad, after hearing the parties, recorded necessary evidence and considering the arguments advanced by both the sides passed the judgment and order of conviction and sentence dated 17-2-2004 in Criminal Case no.179 of 2001 awarding simple imprisonment for a period of six months and fine of Rs.500/-, in default of payment of fine, further simple imprisonment for one month. Being aggrieved by the said judgment and order of conviction and sentence, the applicant preferred Criminal Appeal no.33 of 2004 which came to be rejected and the order passed by the learned Magistrate was confirmed by the learned Additional Sessions Judge, Ahmedabad , giving rise to the present Criminal Revision Application.

3. Heard the learned Advocates for the parties.

4. The learned Single Judge of this Court by order dated 25-02-2005 had granted bail to the applicant-accused on his furnishing personal bond of Rs.5,000/- and surety of the like amount before the trial Court. The learned Counsel appearing for the parties have made a statement at the Bar that the parties have arrived at a consensus and the matter is settled between the parties. The have produced the settlement terms duly signed by the parties and their respective Advocates, as also an undertaking filed by the petitioner which is duly affirmed both of which are dated 8-4-2005. They are ordered to be taken on record. It was agreed by and between the parties that the offence punishable under

Section 138 of the Negotiable Instruments Act shall be compounded as per the amendment made by the Negotiable Instruments (Amendment and Miscellaneous Provisions)Act, 2002 by inserting Section 147. According to the Counsel for both the parties, in view of the settlement terms and the undertaking filed by the applicant-accused, now there does not exist any dispute between the parties as the same is settled and the applicant-accused be acquitted of the offence under Section 138 of the Negotiable Instruments Act. This being the position, in light of the settlement terms and the undertaking as referred to above, without expressing any opinion on the merits of the matter, this Criminal Revision Application deserves to be allowed.

5. As a result of the foregoing discussion, this Criminal Revision Application is allowed. The judgment and order of conviction and sentence dated 17-2-2004 passed by the learned Metropolitan Magistrate, Court no.3, Ahmeddabad in Criminal Case no.179 of 2001 as well as the order dated 20-12-2004 rejecting the appeal filed by the applicant-accused and confirming the order of the learned Magistrate, passed by the learned Additional Sessions Judge, Court no.6, Ahmedbad, in Criminal Appeal no.33 of 2004 are hereby quashed and set aside. The applidcant-accused is ordered to be acquitted of the offence under Section 138 of the Negotiable Instruments Act. Fine, if any, paid by the applicant, be refunded to him. Rule is made absolute accordingly.

(M.D.Shah,J.)

stanley-mds.